

# TITLE 327 WATER POLLUTION CONTROL BOARD

## PROPOSED RULE AS PRELIMINARILY ADOPTED WITH IDEM'S SUGGESTED CHANGES INCORPORATED

LSA Document #00-136

### DIGEST

Adds a new rule concerning public notification by National Pollutant Discharge Elimination System (NPDES) permit holders of the potential health impact of combined sewer overflows (CSOs) and amends 327 IAC 5-2-9. Effective 30 days after filing with the secretary of state.

### HISTORY

First Notice of Comment Period: #00-136(WPCB) July 1, 2000, Indiana Register (23 IR 2613).

Second Notice of Comment Period and Notice of First Hearing: February 1, 2002, Indiana Register (25 IR 1737).

Date of First Hearing: April 10, 2002.

Third Notice of Comment Period and Notice of Second Hearing: November 1, 2002, Indiana Register (26 IR 422).

### 327 IAC 5-2-9

### 327 IAC 5-2.1

**Bold underline text has been inserted since preliminary adoption**

**Underline strikeout text has been deleted since preliminary adoption**

### SECTION 1. 327 IAC 5-2-9 IS AMENDED TO READ AS FOLLOWS:

#### 327 IAC 5-2-9 Notification requirements for toxic pollutants

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-2; IC 13-18-4

Affected: IC 13-15-1-2; IC 13-18-3

Sec. 9. In addition to the reporting requirements of ~~327 IAC 5-2-8(j)~~, **section 8(10) of this rule**, permits issued to ~~all~~ **any** manufacturing, commercial, mining, ~~and or~~ silvicultural ~~dischargers~~ **discharger** shall contain conditions requiring ~~such dischargers~~ **the discharger** to notify the commissioner as soon as ~~they know~~ **the discharger knows** or ~~have~~ **has** reason to ~~believe know the following:~~

(a) (1) That any activity has occurred or will occur ~~which~~ **that** would result in the discharge of any toxic pollutant ~~which~~ **that** is not limited in the permit if that discharge will exceed the highest of the following notification levels:

(1) (A) One hundred (**100**) micrograms per liter. (~~100 µg/l~~);

(2) (B) Two hundred (**200**) micrograms per liter (~~200 µg/l~~) for acrolein and acrylonitrile; five hundred (**500**) micrograms per liter (~~500 µg/l~~) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (**1**) milligram per liter (~~1 mg/l~~) for antimony.

~~(3)~~ (C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7). ~~or~~  
~~(4)~~ (D) A notification level established by the commissioner on a case-by-case basis, either at ~~his~~ **the commissioner's** own initiative or upon a petition by the permittee. This notification level may exceed the levels specified in ~~subdivisions (1), (2), or (3)~~ **clause (A), (B), or (C)** but may not exceed the level which can be achieved by the technology-based treatment requirements applicable to the permittee under the CWA (see 327 IAC 5-5-2).

~~(b)~~ (2) That ~~they have~~ **the discharger has** begun or ~~expect~~ **expects** to begin to use or manufacture, as an intermediate or final product or byproduct, any toxic pollutant ~~which~~ **that** was not reported in the permit application under 40 CFR 122.21(g)(9). However, this ~~subsection~~ **subdivision** does not apply to the permittee's use or manufacture of a toxic pollutant solely under research or laboratory conditions.

*(Water Pollution Control Board; 327 IAC 5-2-9; filed Sep 24, 1987, 3:00 pm: 11 IR 622)*

SECTION 2. 327 IAC 5-2.1 IS ADDED TO READ AS FOLLOWS:

### **Rule 2.1. Combined Sewer Overflow Public Notification**

#### **327 IAC 5-2.1-1 Purpose**

**Authority:** IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

**Affected:** IC 13-18-3

**Sec. 1. The purpose of this rule concerning community notification of potential health impacts resulting from a combined sewer overflow discharge is to promote and accomplish the following:**

**(1) Educate the public, in general, and those persons who, specifically, may come into contact with water that may be affected by a combined sewer overflow discharge as to the health implications possible from combined sewer overflow discharge tainted water.**

**(2) Alert persons members of the public who most likely would ~~may~~ be immediately affected by a combined sewer overflow discharge or the potential for a combined sewer overflow discharge to occur.**

**(3) Protect persons Enable members of the public to protect themselves from possible exposure to waterborne pathogens resulting from contact with or ingestion of water from a waterway that may be affected by a combined sewer overflow discharge.**

**(4) Complement the combined sewer overflow discharge requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit but not obviate or supersede any more stringent requirements contained in an NPDES permit.**

*(Water Pollution Control Board; 327 IAC 5-2.1-1)*

#### **327 IAC 5-2.1-2 Applicability**

**Authority:** IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

**Affected:** IC 13-18-3

### **Sec. 2. Any person required to possess a National Pollutant Discharge Elimination**

System (NPDES) permit and having one (1) or more combined sewer overflow outfalls into waters of the state must comply with this rule. (*Water Pollution Control Board; 327 IAC 5-2.1-2*)

### **327 IAC 5-2.1-3 Definitions**

**Authority:** IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

**Affected:** IC 13-11-2-158; IC 13-11-2-265; IC 13-18-3

**Sec. 3.** The following definitions apply throughout this rule:

(1) “Affected persons public” means those persons who ~~most likely would~~ may be exposed to waterborne pathogens through direct contact with or ingestion of water affected by a combined sewer overflow discharge and includes is limited to:

(A) residents on or adjacent to a combined sewer overflow outfall affected waters;

(B) ~~residents downstream of a combined sewer overflow outfall~~ public and private schools on or adjacent to affected waters; ~~and~~

(C) owners or operators of facilities that provide access to or recreational opportunities in or on a waterbody affected ~~by a combined sewer overflow discharge~~ waters; and

(D) owners or operators of public drinking water systems with surface intakes in or on affected waters.

(2) “Affected waters” means those waters where the E.coli criteria may be exceeded due to a combined sewer overflow discharge.

(3) “Combined sewage” means a combination of wastewater, including domestic, commercial, or industrial wastewater and storm water transported in a combined sewer.

(4) “Combined sewer overflow community” or “CSO community” means a recipient of a National Pollutant Discharge Elimination System (NPDES) permit that includes one (1) or more combined sewer overflow outfalls.

(5) “Combined sewer overflow discharge” or “CSO discharge” means the discharge of combined sewage from an overflow point listed in an NPDES permit.

(6) “Combined sewer overflow outfall” or “CSO outfall” means a structure that:

(A) conveys combined sewage into a receiving waterbody; and

(B) is listed in an NPDES permit.

(7) “Combined sewer system” means a system that:

(A) is designed, constructed, and used to receive and transport combined sewage to a publicly owned wastewater treatment plant; and

(B) may contain one (1) or more combined sewer overflow outfalls that discharge sewage when the hydraulic capacity of the wastewater treatment plant, combined sewer system, or part of the system is exceeded as a result of a wet weather event.

(8) “Commissioner” means the commissioner of the department of environmental management.

(9) “Department” means the department of environmental management except as specifically referenced in this rule.

(10) “Person” has the meaning set forth at IC 13-11-2-158.

(11) “Waters of the state” has the meaning set forth for “waters” at IC 13-11-2-265.

(Water Pollution Control Board; 327 IAC 5-2.1-3)

**327 IAC 5-2.1-4 CSO notification procedure**

Authority: IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

Affected: IC 13-18-3

**Sec. 4. (a) A CSO community shall:**

**(1) develop a CSO notification procedure that meets the requirements of this rule; and**

**(2) incorporate the CSO notification procedure into its CSO operational plan.**

**(b) A CSO notification procedure must include the following information at a minimum:**

**(1) Determination of affected waters for the purpose of providing community notification according to section 5 of this rule.**

**(2) Locations of:**

**(A) the CSO outfalls;**

**(B) public access points, and recreational facilities including boat launches and bridges located on affected waters; and**

**(C) parks, school yards, parkways, and greenways on or adjacent to affected waters.**

**(3) Locations of drinking water suppliers having surface water intakes located within ten (10) river miles downstream of each CSO outfall within the CSO community's jurisdiction.**

**(4) Method, according to section 6 of this rule, that shall be used to provide notification to the affected persons public within the area of each affected water.**

**(5) Assignment of responsibilities within a CSO community for implementing the CSO notification procedure.**

**(c) A CSO notification procedure must meet the following be:**

**(1) Be recorded on a form that is:**

**(A) designed by the commissioner; and**

**(B) made available from the commissioner within one (1) month after the effective date of this rule.**

**(2) Be submitted to the commissioner for approval before the latter of the following:**

**(A) Four (4) review six (6) months after the effective date of this rule;**

**(B) Four (4) months after the form is available from the commissioner.**

**(3) Be (2) included in the community's CSO operational plan;**

**(4) Immediately be implemented (3) in the initial stages of implementation by the CSO community following upon submission according to subdivision (2)(A) or (2)(B); (1);**

**(4) fully implemented no later than ninety (90) days after the date of submission according to subdivision (1); and**

**(5) Be modified as necessary in accordance with comments received from in order to ensure that the procedure is consistent with this rule if either of the following occurs:**

**(A) The commissioner requests such modification within six (6) months of the**

date of submission of the notification procedure.

(B) A member of the affected public requests that the department reevaluate the notification procedure.

*(Water Pollution Control Board; 327 IAC 5-2.1-4)*

### **327 IAC 5-2.1-5 Notification**

**Authority:** IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

**Affected:** IC 13-18-3

**Sec. 5. (a) A CSO community shall provide notification to:**

**(1) affected ~~persons~~ public;**

**(2) other persons within the CSO community who request to be notified in response to the public notice required by section 6(a)(1) of this rule; and**

**(3) local health departments and drinking water suppliers having surface water intakes located within ten (10) river miles downstream of each CSO outfall experiencing or about to experience a CSO discharge.**

**(b) The notification must be appropriately worded to explain the nature of the potential health effects of a CSO discharge and steps that affected persons can take to avoid exposure.**

**(c) Unless specifically required in this rule, a CSO community is not responsible for confirming that the intended recipients of the notification required by subsection (a) received the notification.**

**(d) Notification must be provided whenever information from a reliable source indicates ~~one (1) of the following; that:~~**

**(1) a discharge or discharges from one (1) or more combined sewer overflow outfalls is occurring; or**

**(2) a ~~reasonable likelihood exists that a~~ discharge or discharges from one (1) or more combined sewer overflow outfalls ~~will occur within the next twenty-four (24) hours;~~ is imminent based on predicted or actual precipitation or a related event.**

**~~(e) If a combined sewer overflow discharge occurs within the general time period predicted by a notification, then no additional notification is required to state that the discharge is occurring or has occurred.~~**

**~~(f)~~ (e) If a CSO discharge occurred and notification was not provided according to subsection (d), the CSO community shall report this fact on the monthly report required according to section 7(a) of this rule. *(Water Pollution Control Board; 327 IAC 5-2.1-5)***

### **327 IAC 5-2.1-6 Community notification methods**

**Authority:** IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

**Affected:** IC 13-18-3

**Sec. 6. (a) A CSO community shall do the following unless alternative procedures are identified by the community that are equivalently effective:**

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(1) ~~Send an invitation~~ Provide public notice in a newspaper of general circulation in March of each year to allow the following persons to request receipt of CSO notification:

(A) Media sources, such as newspapers, television, or radio.

(B) Affected persons public.

(C) Other interested persons in the CSO community.

(2) Provide notification to persons those identified under subdivision (1) who accept the notification invitation according to clause (A): request receipt of CSO notification under subdivision (1):

(A) when a CSO discharge is occurring or is reasonably likely to occur within twenty-four (24) hours; imminent based on predicted or actual precipitation or a related event; and

(B) in a manner that is mutually agreeable to the recipient and the CSO community.

If the recipient and CSO community do not reach agreement on an acceptable manner of notification, then the CSO community shall provide notice by telephone or facsimile: a reasonable, effective means.

(b) In addition to the requirements of subsection (a), a CSO community shall post a prominent sign within the CSO community's jurisdiction:

(1) at access points to the an affected water, including boat ramps, bridges, parks, and school yards;

(2) along linear public areas, such as parkways and greenways on or adjacent to affected waters at intervals frequent enough locations most likely to provide notification to persons who may come into direct contact with the water based on information available to the CSO community; and

(3) with the following wording language printed in English and or any other language common in the locale (including the language necessary to fill in the blanks) that states or is equal in meaning to the following: "Caution-Sewage or Wastewater pollution. Sewage or Wastewater may be in this water during and for several days after periods of rainfall or snow melt. People who swim in, wade in, or ingest this water may get sick. For more information, please call [insert local sewer authority, telephone number, and, if available, a Web site address]."

(c) Cautionary combined sewer overflow signs posted prior to the effective date of this rule advising that combined sewer overflows may occur at that point do not need to be replaced specifically to comply with the wording of subsection (b)(3). If, however, a cautionary combined sewer overflow sign existing prior to the effective date of this rule does need replacement due to reasons such as weathering or other reasons for replacement then the replacement sign must comply with the language suggested in subsection (b)(3).

(c) (d) If an access point to an affected water is located on private property or property outside a CSO community's jurisdiction, then a CSO community shall:

(1) annually offer to post provide the sign required under subsection (b) for the owner or operator of the private or nonjurisdictional property;

(2) submit documentation to the department each March that the property owner or operator has refused to allow the CSO community to post the sign on the owner's

**property; and**

**(3) (2) not be required to ~~post~~ provide** the sign required under subsection (b) provided the private or nonjurisdictional property owner or operator has refused the community's offer made according to subdivision (1).

**(d) A CSO community may submit a request for the commissioner's approval to establish alternative notification methods specific to the CSO community's needs for providing notification to affected persons if the CSO community can demonstrate to the department that such alternative notification methods are more effective at providing actual notice.** (*Water Pollution Control Board; 327 IAC 5-2.1-6*)

#### **327 IAC 5-2.1-7 Record keeping and reporting**

**Authority:** IC 13-14-1-5; IC 13-14-8; IC 13-14-9; IC 13-18-4-1

**Affected:** IC 13-18-3

**Sec. 7. (a) A CSO community shall document its public notification efforts on its monthly CSO discharge monitoring report (DMR).**

**(b) A CSO community shall maintain a record of reports submitted according to subsection (a) that is:**

**(1) kept at the wastewater treatment plant; and**

**(2) available to the commissioner's representatives during the department's normal working hours.**

*(Water Pollution Control Board; 327 IAC 5-2.1-7)*